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Clinics and "Contextual Integration": Helping Law Students Put the Pieces Back Together Again

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Abstract
In legal education, as in all education aimed at practice, the relationship between theory and practice is an uneasy one. William Mitchell College of Law, one of the nation's few free-standing law schools, has traditionally placed itself squarely on the practice side of the theory/practice axis. It has aimed to produce law graduates who could walk into a law office and begin practicing law—not lawyers who would spend additional years learning the profession at someone's elbow. In recent years, William Mitchell has begun to embrace a more academic approach to legal education. This paper suggests that the College need not, and should not, turn its back on its practical past as it moves along the path of academic rigor. The first section shows that the highest and best use of clinical education—education which uses real or realistic lawyer experiences—furthers the goal of producing lawyers who are competent practically, well-integrated, and have a clear and critical sense of what the work of the lawyer is and ought to be. The paper then proceeds to develop a series of criteria for designing and evaluating a clinical program to meet that goal.

Keywords
Law school, legal practice, legal instruction, legal education, William Mitchell, legal practicum, law practice, legal clinics

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CLINICS AND "CONTEXTUAL INTEGRATION": HELPING LAW STUDENTS PUT THE PIECES BACK TOGETHER AGAIN
Design for an Integrating Curriculum in Lawyer Education at William Mitchell College of Law

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INTRODUCTION: THE ROLE OF INTEGRATION IN LAWYER EDUCATION

At its best, clinical education links theory, practice and values. It helps students integrate the knowledge and skills they have learned in law school with their own values to become effective, ethically grounded lawyers. This integrative task should be a key goal of legal education.[1]

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† Professor of Law, William Mitchell College of Law; B.A., Carleton College, 1968; J.D., Harvard Law School, 1973. I am grateful for the assistance of a number of people in working on this article. Many of my present and former colleagues were kind enough to read and provide helpful comments on drafts. In particular, I want to thank Professor Roger Haydock, whose vision and energy have made possible much of William Mitchell's clinical program; Professor John Sonsteng, whose creative ideas early on helped me start thinking about integrative education; and Professor Ann Juergens, whose clinical teaching and ideas have served as a model for me of integrated lawyering. I especially thank Kate O'Brien for her invaluable help in readying this paper for publication.

1. I began this article as part of an evaluation of William Mitchell's clinical program. First distributed to the faculty of the school in January 1988, the article was originally entitled "Evaluating and Planning for Clinical Education at William Mitchell College of Law."

The context for the article was a discussion about the future of the clinical program and the status of clinical teachers at William Mitchell. Its in-house clinics were, at that time, staffed by half-time, non-tenure track teachers on year-to-year contracts. Some of the faculty favored full-time, tenure-track status for clinical teachers. Others argued for a variety of other statuses, including adjunct and limited-term "visitors from practice."

The drafts of this paper were intended to focus on the goals of legal education and to place clinical education within these goals. From the goals flowed conclusions about the nature of clinical education—that it was as important and difficult as "traditional" legal education—and about teachers of clinical education—that the teaching job was as difficult and important as "traditional" legal teaching jobs.

In the summer of 1988, three members of the faculty produced a study of small group education at William Mitchell. That study, which placed some of the conclusions of this article in a broader context, recommended, among other things, that

In legal education, as in all education aimed at practice, the relationship between theory and practice is an uneasy one.[2] William Mitchell College of Law, one of the nation's few free-standing law schools, has traditionally placed itself squarely on the practice side of the theory/practice axis. It has aimed to produce law graduates who could walk into a law office and begin practicing law—not lawyers who would spend additional years learning the profession at someone's elbow.[3]

This aim grew as much from economics as from ideology. Education at William Mitchell was practical education because Mitchell students could not afford to be impractical. It has been a working person's law school whose students have been impressed, not by books on the shelves of their teachers, but by the tested know-how of the practitioner.

If this approach was practical, down to earth, and non-elitist, it was also concrete, vaguely anti-intellectual and largely uncritical. If it was successful in passing the practical knowledge of one generation of lawyers to the next, it did so in an unquestioning, unreflective way.

It was, in short, a non-academic, though certainly "professional," approach to lawyer education. It was one in which a relatively small proportion of the institution's capital—fiscal and intellectual—was invested in critical thought about the law or lawyers.

The past forty years have brought important changes to the school. The number of full-time faculty members has grown substantially.[4] Today, a consensus of the college faculty recognizes the importance of scholarly work and of an approach to teaching law which gives due weight to rigorous analysis and critical, skeptical and creative thought.

This does not mean that the institution has abandoned, or

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teachers of clinic courses be full-time, tenure track faculty. That recommendation was implemented the following school year with the creation of two tenure-track positions whose focus would be clinical education.

2. *See* D. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER 3–12 (1987) (describing the relationship between theory and practice in several professions).

3. *See* WILLIAM MITCHELL COLLEGE OF LAW BULLETIN/CATALOG, 1987–88, at 30–31.

4. In 1954, the College listed five full-time faculty members, two of whom were deceased. SAINT PAUL COLLEGE OF LAW ANNOUNCEMENTS AND BULLETIN 1954–55, at 4 (subtitled "A Lawyer's Law School") (St. Paul College of Law was the predecessor of William Mitchell College of Law). In 1989, the College listed 33 full-time faculty members. WILLIAM MITCHELL COLLEGE OF LAW BULLETIN/CATALOG, 1989–90, at 11.

should abandon, its historic mission. The College's embrace of the academic approach to legal education does not mean that it has abandoned the practical for the theoretical. But does the new rigor entail, at least implicitly, a tilt toward serving the elite, large law firms, where the practical education takes place on the job? Must the College forsake the profession for the academy?

This paper suggests that the College need not, and should not, turn its back on its practical past as it moves along the path of academic rigor. In clinical education lies the model for bringing the critical approach of the academy to bear on the profession. Properly understood, clinical education helps students begin to integrate what they have learned of doctrine with the practical skills of lawyering in a way which is informed by a critical sense of values.

This paper starts with an axiomatic statement of the purposes of a particular type of lawyer education: one which seeks to produce lawyers who are competent practically, who are well-integrated, and who have a clear and critical sense of what the work of the lawyer is and ought to be. The first section will show that the highest and best use of clinical education—education which uses real or realistic lawyer experiences—furthers this goal. The paper then proceeds to develop a series of criteria for designing and evaluating a clinical program to meet that goal.

I. THE SUBJECT MATTER AND PEDAGOGY OF LAWYER EDUCATION

The first step in planning for any educational program is the establishment of a set of criteria or standards against which to judge the program. When planning for lawyer education, we must have some notion of what it is that lawyers must learn, and some theory about how they may best learn it.[5]

What follows is a broad-stroke prescription for what I take to be the proper subject matter of lawyer education, some implications for pedagogy drawn from that prescription, and an outline of the subject matter of lawyer education. The subject

5. I use the term "lawyer" education intentionally in place of "legal" education. The latter suggests that the educational process is limited to a study of law. Learning to be a lawyer takes much more than that, even if the study of "law" is understood broadly to include the study of the skills and thought processes of lawyering.

matter falls into three major areas: (1) skills and doctrinal knowledge, (2) integration, and (3) expertise.

A. Skills and Doctrinal Knowledge; Ceterius Paribus *Learning*

For many, the contents of this first category would be exhaustive of the subject matter of law school education. This category includes doctrinal learning which is the subject matter of most "substantive" law school courses, the learning of reasoning "skills" which is the more or less explicit underlying "subject matter" of most law school courses, and the learning of the communication and interpersonal skills of interviewing, counseling, negotiating and advocacy work.

There are several reasons for lumping these apparently diverse items into one "subject matter." First, all three areas are based on learning "constructs" which are more or less well-defined and isolated from their contexts. In the area of doctrinal learning, knowledge is divided into subjects such as contracts, torts, and civil procedure. Within each of these subjects, students are led through a logical progression of subtopics. Similarly, in the "skills" area, students learn a series of named, discrete skills, such as client interviewing, negotiating, and direct examination.[6]

The educational model inherent in this subject matter is the *ceteris paribus*[7] model. Instruction in these areas focuses the student's attention by isolating the "relevant" from the "irrelevant." The lesson is often demonstrated with hypotheticals which hold constant that which is deemed irrelevant and allow the relevant factors to vary.[8]

All of these areas involve both "theoretical" and "practical" learning.[9] In the substantive areas, students learn "rules" (legal theorems) which they are expected to apply to "fact situ-

6. There is less conscious attention paid to the skills of reasoning, less naming and theorizing about them. *See* Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 253 (1978).

7. This term is used in an educational context by J. Flood, Counselors and Clients: The Art and Science of Lawyering 4–5 (Fall 1986) (Paper for the Int'l Conf. on Exploring and Expanding the Content of Clinical Legal Education and Scholarship, UCLA and Warwick Schools of Law) (unpublished draft on file with the author).

8. Hypotheticals demonstrate the function of a particular factor by varying it while all other factors remain constant.

9. *See* Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 577 (1987). Legal education divides "things into the theoretical and the practical: the main tent and the sideshow." *Id.*

ations." Similarly, in the skills area, students often learn a theory based approach to a particular activity and are expected to use that theory in practical exercises.[10]

Any evaluation of clinical education must recognize the predominance of the *ceteris paribus* model and clearly define the relationship between the clinical model and the *ceteris paribus* model. The *ceteris paribus* method is the predominant model of legal education. Its strengths and weaknesses are closely related to each other, both arising from the complexity and the breadth of the study of law and lawyering.

The strength of the *ceteris paribus* model is that it allows attention to be focused on a manageable, controllable subject matter. The model allows the teacher to separate for the student the figure from the ground, a task which might otherwise be difficult for the novice because of the mass of information available in a legal environment. It allows for intentional teaching, leading the learning through a complex series of steps in a logical and methodical way to assure coverage of a particular area of knowledge or skill. Further, the method takes into account the need for repetition as an aid to, or a necessary part of, learning. By abstracting the learning environment from the real world of lawyering, the teacher can insure that the student gets the right amount of practice of the elements being taught.

The central weakness of the *ceteris paribus* model is that it teaches the elements of lawyering in relative isolation from each other.[11] In the real world of lawyering, all "other things" are not held constant. Learning how the skills and knowledge fit together and what it is that they fit into is the next subject of the lawyer education process.

B. The Task of Integration

It is a truism that law schools—at least to the extent that they

10. For example, in learning about direct examinations, students are taught general principles said to govern organization, pacing, and the posing of questions to a variety of witnesses. T. MAUET, FUNDAMENTALS OF TRIAL TECHNIQUES § 4.2 (2d ed. 1988).

11. Cramton, *supra* note 6, at 261. Students get "discrete skills and certain bodies of fact." Often neglected are the "humane aspects of personal development and experience, the emotional aspects of the professional relationship, and the development of capacities of imagination, empathy, self-awareness, and sensitivity to others." *Id.*

limit their educational programs to the *ceteris paribus* learning described above—do not produce graduates who are prepared to practice law. The problem is not wholly, or even mostly, that there is too little teaching of doctrinal knowledge or lawyer skills in law school.[12] Rather, some law graduates are not prepared to practice law because they have never learned what the lawyer's work is. Learning this lesson is, unlike the analytic approach to doctrine and skills education, essentially an integrative task.

There are, broadly speaking, two levels at which integration occurs in the development of a lawyer. First, there is "practical" or "instrumental" integration:[13] integration which is internal to, and assumes as a given, the broad outlines of the lawyer's work. There is, also, a broader, more profound type of integration which lawyers-in-the-making must accomplish. This integration defines the boundaries and contours of the work of the lawyer and the manner in which it relates to its contexts. It is this "contextual" integration that determines the meaning of the lawyer's work.

1. Instrumental Integration

Lawyers need to integrate the doctrinal knowledge and individual skills they have learned into a functional whole. This process has two dimensions. In one dimension, the lawyer learns to use the skills together with each other. The products of this form of integration are second level skills such as, in the litigation context, being able to develop and implement a "theory of the case," or, in a non-litigation context, being able to

12. It may be that there are holes in the knowledge/skills curriculum. *See, e.g.*, Devitt & Roland, *Why Don't Law Schools Teach Law Students How to Try Lawsuits?*, 13 WM. MITCHELL L. REV. 445 (1987)(suggesting a need for more teaching of trial skills in law school).

The pervasive perception among many law students and former law students, however, is that the last year or so of law school is a waste of time. The feeling stems from the notion that they have learned all of the "skills" and "knowledge" they need to learn in a school setting and that they can now learn best in the real world. *See* Pannier, *The Case for a Two Year Law School Program*, The Opinion (William Mitchell College of Law), Dec. 1986–Jan. 1987, at 1. In the language of this paper, the complaint is that a year or two of *ceteris paribus* learning is enough. This may be true. However, there is a place in the law school curriculum for the development of expertise: the deepening of skills and knowledge, not in isolation, but in the broader context of the lawyer's work.

13. *See, e.g.*, Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986).

do the client interviewing, counseling, legal research, negotiating and drafting necessary to produce, for instance, a contract.

In the second dimension, the lawyer relates the doctrine and skills learned to the real world. In its trivial aspect, law students and lawyers need to temper their "book" learning with practical knowledge of actual lawyer practices.[14] A more profound form of instrumental integration fosters the application of rules to real cases. This activity requires the development of judgment which, unlike the doctrine and skills in the *ceteris paribus* model, is not rule-based.[15]

Finally, a lawyer develops a stance, an attitude, or an approach to lawyering. Will the lawyer be aggressive or passive? Tenacious or easily discouraged? Straight or sharp? Creative in finding solutions? Or quick to spot obstacles and problems? The lawyer must integrate the pieces of lawyering into a combination of approaches and attitudes which will be most effective in achieving the tasks set him.[16] Through instrumental integration, "the layman [is transformed] into a self-assured member of the legal 'culture'."[17] Instrumental integration requires exposure to the contours of that culture.[18]

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14. For example, in their community, do lawyers routinely extend the time to answer a complaint, or do they require that a motion be made? Are general denials tolerated? Are summary judgments likely to be granted? Does one stand or sit in examining witnesses?

This aspect of learning lawyering is trivial because it amounts to fine tuning the acquired rules and knowledge rather than acquiring a different kind of knowledge or faculty. One could conceive of a law school which taught, in its classrooms, this kind of "lore."

15. Luban, *Epistemology and Moral Education*, 33 J. LEGAL EDUC. 636, 639 (1983). Luban points out that the process of applying rules to cases must, at some point, become non-rule-based in order to avoid an infinite regress. There is, no doubt, some teaching of judgment in the *ceteris paribus* classroom. To a great extent, however, the classroom focuses on the "argumentative links between rules, but not on the application of rules to particular cases." *Id.* at 640. Furthermore, the kind of judgment developed in the classroom will necessarily be limited to the kind of legal argumentation which occurs there. This is not the only, or even the most important, kind of judgment for the practicing lawyer. *Id.* at 641.

16. *See infra* notes 21–45 and accompanying text discussing the broader questions: Which of these attitudes are ethical? How do they fit with personal values? What are their political implications?

17. Lortie, *Laymen to Lawmen: Law School Careers and Professional Socialization*, 29 HARV. EDUC. REV. 352 (1959), *reprinted in* G. BELLOW & B. MOULTON, THE LAWYERING PROCESS 14, 15 (1978).

18. *See id.* Lortie contrasts the then-current (1959) pattern of legal education with that of the 19th century office apprenticeship system. In the earlier model, the "neophyte" "saw and assisted in real cases, in concrete situations, and with specific personalities. Exposed to live models of practicing attorneys and clients, he pos-

2. *Contextual Integration*

The first step of lawyer education is the acquisition of a set of tools. The second step is learning to use the tools together to achieve certain ends. It is the process of contextual integration which then examines the ends of lawyering. It is, in a way, a jurisprudence of lawyering.

The lawyer's work can be defined instrumentally—through what a lawyer does and how she does it.[19] Or it can be defined in terms of its goals and its effects on the outside world.[20] Just as lawyers must learn to integrate knowledge and skills into a functional whole, so must they come to an understanding of the meaning and values of the lawyer's work in its broader social, political, ethical, personal and business contexts.

What is the essence of the lawyer/client relationship?[21] What does it mean to "represent" another?[22] To what extent do, or should, lawyers "control" their clients? To what extent should, or do, clients "control" their lawyers? What factors influence the power balance between lawyer and client?[23]

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sessed realistic bases for learning the lawyer role." *Id.* In contrast, according to Lortie, "[t]oday what was once concurrent experience is serial." *Id.* The student, in law school, is "isolated from the market place of legal services . . . . His school environment provides small opportunity to witness the varieties and subtleties of lawyer roles, and although his knowledge of legal principles probably exceeds that of his nineteenth century predecessor, he graduates with minimal knowledge of the procedures and institutions of practice." *Id.*

Lortie asserts that the "self-concept" of the lawyer's role "crystalizes" where the "role performance is undertaken in a psychologically meaningful context," and suggests that law schools provide only minimal opportunity for this development. *Id.* at 17.

Lortie wrote, as Bellow and Moulton point out, before the development of clinical programs "can be seen as a response to concerns of the sort he raises." *Id.* at 15 n.8.

19. For a "somewhat self-serving list" of what lawyers do, see G. BELLOW & B. MOULTON, THE LAWYERING PROCESS 22–23 (1978). To the extent that the list pretends to define the lawyer's role, it does so in terms of what activities lawyers engage in, rather than what ends they seek, or what function they serve, or what effects they have outside of their role.

20. For a discussion of the lawyer's role in society, see Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63 (1980).

21. *See generally* Flood, *supra* note 7.

22. *See, e.g.*, Luban, *Introduction* to THE GOOD LAWYER at 8 (D. Luban ed. 1983). Luban identifies two core meanings of the idea of representation: one arising from the law of agency, the other arising from the law of procedure. He suggests that these two sources cause significant differences in the content of the relationship.

23. Bellow and Moulton suggest that a "lawyer's specialized knowledge of the system can be a source of considerable control over the client." G. BELLOW & B. MOULTON, *supra* note 19, at 25. It is generally thought that clients "in need" are

What form does, or may, lawyer control of the client take?[24] What justifications are there for a lawyer's interference with a client's choices? Paternalism?[25] Other ethical considerations?[26]

What is or should be the relationship between a person's moral and personal values and her actions as a lawyer? Do, or should, lawyers keep their private and professional personalities separate? What are the consequences of the various moral configurations in which personal and professional values are reconciled?[27] How do lawyers cope with the stress caused by their work? What are the sources of that stress?[28] What is the range of stances or attitudes people have toward their developing careers as lawyers?[29] How do lawyers learn about "issues of relationship, organizational dynamic, and personal growth?"[30]

In what ways do lawyers add value to society?[31] What role

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particularly subject to such control. *See* Flood, *supra* note 7. How far should or do lawyers go to ensure that they are not "manipulating" their clients? *See* D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987); Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975); Lehman, *The Pursuit of a Client's Interest*, 77 MICH. L. REV. 1078 (1979).

Alternatively, powerful clients may dominate their lawyers. *See* G. BELLOW & B. MOULTON, *supra* note 19 at 25. Even when this domination does not extend to the point of causing the lawyer to violate professional rules of conduct, it has important implications for the profession and the role that the profession claims for itself. For example, what obligation do or should lawyers feel to provide moral or ethical advice and counsel to their powerful clients? At what point does or should a lawyer blow the whistle on her client or resign from representation because the client will not follow her advice? *See id.* at 25–26.

What special considerations attach when the lawyer is the last resource available to the client? *See* Bellow & Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U.L. REV. 337 (1978). When the client is particularly vulnerable or of particularly limited capacity?

24. *See* Ellmann, *supra* note 23; Lehman, *supra* note 23.

25. *See* Luban, *Paternalism and the Legal Profession*, 1981 WIS. L. REV. 454.

26. *See* Ellmann, *supra* note 23.

27. For a thorough discussion of this dichotomy and reconciliation, see Postema, *supra* note 20.

28. *See* Wishman, *A Criminal Lawyer's Inner Damage*, Minneapolis Tribune, July 23, 1977, at 6A, col. 4.

29. *See* Gillers, *Great Expectations: Conceptions of Lawyers at the Angle of Entry*, 33 J. LEGAL EDUC. 662 (1983).

30. Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 629 (1983).

31. *See* Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984). *See also* Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 378 (1980). The former Chief Justice sees lawyers as

do lawyers play in making the systems of legal assistance, dispute resolution and justice accessible to all segments of the society? What role should they play?[32] To what extent do lawyers make these systems inaccessible by complicating what is simple? By obfuscating what could be clear? Do lawyers see their role as helping to make their clients feel good about the treatment they get in those systems?[33] To what extent do lawyers, judges and other court personnel view themselves as allies or insiders, putting on a show for the "clients" of the court system and the public?[34]

What is the relationship of the lawyer's work to truth?[35] Are lawyers "bent on achieving 'a sense of apolitical moral engagement' by celebrating 'an ahistorical and apolitical conception

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> problem-solvers, harmonizers, and peacemakers, the healers—not the promoters—of conflict. Lawyers must reconcile and stabilize, for a democracy often functions best by compromise. . . . [L]awyers have served as the indispensable "brokers" of social progress, providing the lubricant for acceptable resolution of controversies and for gradual change and evolution of the law.

Id. at 378. Burger acknowledges that lawyers need to be "effective advocates" and that "a strong, independent, courageous and competent bar" is "imperative for a free people." *Id.* at 377–78. Clearly, the two roles are often inconsistent.

But see Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570, 573 (1983). Bok characterizes the legal profession as "a massive diversion of exceptional talent into pursuits that often add little to the growth of the economy, the pursuit of culture, or the enhancement of the human spirit." *Id.*

32. *See generally* Bok, *supra* note 31.

33. For example, a young lawyer practicing in a small Minnesota town had a contract from the county to represent parents (mostly low income women) in termination of parental rights cases. He told me that he viewed his role as trying to make his clients feel as if they had gotten a fair day in court, making them feel better about the process by which their rights as parents were terminated. This appeared to be a serious, non-cynical view. I suspect it arose from his feeling, perhaps not recognized explicitly, of impotence in his role as advocate for these persons, a feeling which arose in large measure because he lacked the resources to take effective action to help these people in need. *See also* Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 93 (lawyering seen as part of a set of procedures which enables society to reaffirm to its members the kind of society it is and hopes to be).

34. *See* Blumberg, *infra* note 41 (Blumberg views defense attorneys as mediators in a plea-bargain system rather than advocates in an adversarial system). *See also* Simon, *supra* note 33; E. GOFFMAN, *infra* note 38, at 151.

35. *See* Simon, *supra* note 33, at 34 (an account of the Monroe Freedman/John Noonan debate on the role of the criminal defense lawyer on developing or destroying truth in the courtroom). *See also* T. SANNITO & P. MCGOVERN, COURTROOM PSYCHOLOGY FOR TRIAL LAWYERS (1985) (advocating the use of "suggestibility," "misdirection," and "hypnotic suggestions" as means of jury selection; discussing ways in which an attorney can influence jurors through manipulation of her "image" with the jurors).

of human nature?' "[36] Or, is a lawyer a "[p]olitical man," "an activist and transformer of the world who recognizes and accepts 'a coercive dimension to his actions'?"[37] How do lawyers carry themselves? What is their "persona," their mask to the world?[38]

What is the relationship of the lawyer's work to justice? Justice Burger asserts that lawyers are " 'brokers' of social progress, providing the lubricant for *acceptable* resolution of controversies and for *gradual* change and evolution of the law."[39] To whom are the resolutions to be "acceptable?" Is "gradual" change good or harmful?

What is the relationship of lawyers to those systems, judicial and otherwise, which are not fair, do not offer real opportunities for justice, or are otherwise oppressive?[40] What pressures and incentives are there for lawyers to go along with those systems?[41] How can lawyers change those systems?[42]

To what extent do law and lawyering perpetuate or facilitate assumptions and biases which are based on race, gender or other immutable characteristics?[43] How can lawyers and law

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36. Meltsner, *supra* note 30, at 628 (quoting Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 554 (1980)).

37. *Id.* (quoting Simon, *supra* note 36, at 557).

38. *See generally* E. GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959). *See also* Meltsner, *supra* note 30. Meltsner suggests that law schools teach students to "feel" like lawyers; that law schools teach that it is right to be "controlling, cool, dispassionate, unfeeling, arrogant." *Id.* at 624. *Do* lawyers feel that way? In what way is that part of the professional role of lawyer?

39. Burger, *supra* note 31, at 378 (citation omitted) (emphasis added).

40. *See, e.g.*, Kendall, *Law Without Justice*, HARV. MAG., Nov.–Dec. 1985, at 33. The author discusses his experience as an attorney with the Legal Resources Center, South Africa's first public interest law firm. The firm provides free legal services to South Africans who are victims of the country's brutal system of apartheid. *Id.* at 33–34.

41. *See* G. BELLOW & B. MOULTON, *supra* note 19. *See also* Blumberg, *The Practice of Law as Confidence Game: Organizational Cooptation of a Profession*, 1 LAW & SOC'Y REV. 15 (1967). Blumberg examines the defense lawyer's role as "double agent" and as an "agent-mediator" whose role is to convince the accused to plead guilty. He criticizes three Supreme Court decisions that address the role of counsel in a criminal case but overlook the reality and character of the lawyer's relationships with the accused and with the court. *Id.* at 28, 38.

42. *See, e.g.*, Gabel & Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369 (1983). The authors suggest that the public and political character of the legal arena enables lawyers to redefine the way people understand the existing social order and their place within it. *Id.* at 370.

43. *See* MINNESOTA SUPREME COURT, MINNESOTA SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS (1989), *reprinted in* 15 WM. MITCHELL L. REV.

schools fight to eliminate these assumptions and biases?[44]

The lawyer must face and resolve in its own right each of these issues.[45] These issues must also be reconciled among themselves. For example, the lawyer must understand how she balances the need to provide efficient, professional services with a belief in client autonomy, the principle of adversary advocacy with the values of truth and justice, and the notion that client ends govern the lawyer with personal ethics.

3. Educational Implications

The process by which integration takes place appears to be chiefly informed by two factors. First, while knowledge and skills are learned in relative isolation from each other, the integration phase of learning is characterized by a dismantling of the boundaries between these elements in order to understand the elements in relation to each other. Instead of viewing the subject against a static background, the integration process seeks to increase understanding by making the complex background part of the subject for study.

Second, while the acquisition of knowledge and skills consists of learning rules and applying them,[46] integration is not rule-governed. This is a consequence of two related characteristics of lawyering. Although some integration consists of learning to apply previously learned rules in new settings, this

827 (1989). The mandate of the task force was to "explore the extent to which gender bias exists in the Minnesota state court system, to identify and document gender bias where found, and to recommend methods for its elimination." *Id.* at ix, 15 WM. MITCHELL L. REV. at 835.

See also Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989). This essay explores the perceptions of black Americans to explain "the source and the strength of minority conviction that courts . . . are capable of bias." *Id.*

Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987). This article examines the doctrine of discriminatory purpose—the requirement that an individual challenging the constitutionality of a facially neutral law prove that those responsible for enacting or administering that law have a racially discriminatory motive. *Id.* at 318.

44. *See, e.g.*, Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989)(discussing ways to maximize opportunities for minority law students to produce publishable material); *see also* Haines, *Minority Law Professors and the Myth of Sisyphus: Consciousness and Praxis Within the Special Teaching Challenge in American Law Schools*, 10 NAT'L BLACK L.J. 247 (1988)(examining the teaching environment for minority law professors within American law schools).

45. Of course, some lawyers will avoid thinking about the issues; this, too, however, is a resolution of the issues.

46. *See* Luban, *supra* note 15.

process generally focuses on the development of judgment rather than on the application of more rules.[47] Also, much of the integrative task involves reconciling seemingly conflicting imperatives in a complex of interpersonal relations and personal values. Although theory is not irrelevant in accomplishing integration, the task is too complex and individualized to expect rules or theory to carry that burden.

In attempting to understand the mechanism by which law students become integrated lawyers, we are confronted with a central problem: the process of integration is not rule-governed. It is not possible to become a fully integrated lawyer by learning a set of rules.[48] This does not mean that integration cannot be understood or that integration cannot be taught. It does mean, however, that learning integration must involve participation in, and observation of, the work of the lawyer[49] rather than learning rules *about* the work of the lawyer.

A second problem is a corollary of the first. If the process of integration is not rule-based but must be learned experientially, we must ask whether learning about integration in law school can be useful in the same way that learning rules is useful. Can it be applied outside of the immediate context in which it is learned?[50] The educational challenge is to find a way to teach or to facilitate the process of integration so that the lesson can be useful in a broader context.

The integrative task of becoming a lawyer is too complex, too judgment-based, and too idiosyncratic to be accomplished solely in the traditional law school classroom. Clinical methodology, then, is the model for the integrative task of lawyer

47. *Id.*

48. This conclusion follows both from the complexity of the task and—what may be the same problem in different form—from the fact that a significant part of the integrative task consists precisely in bridging the gap between rule and action. Making rules for this process only postpones the inevitable need to bridge that gap.

49. *See* L. WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 82–83 (G. Anscombe trans. 1953). Wittgenstein suggests that the "meaning" of words is learned through the use of "examples and by practice." We learn the meaning of words even though we cannot necessarily articulate the rules for using the word. The "meaning" of integration is learned and communicated in the same way. *See also* Luban, *supra* note 15, at 644–45 (an insightful discussion of this process in the context of learning moral judgment).

50. It would be hard to justify spending law school resources on integration if integration is not applicable to the outside world. The number of hours of experience which an individual can get as a law student is dwarfed by the number of hours of experience she will get as a lawyer.

education,[51] just as the *ceteris paribus* classroom is the model for doctrinal/skills learning.

People, as they become lawyers, bring with them images of the lawyer's work which guide the way they put the pieces together to form a whole. These images are paradigmatic combinations of values, attitudes and behaviors which serve as guides for the integration process. It is these integrating images which constitute the understanding which people have of their work. They are the "rules" of integration.

In significant ways, the coalescence of the lawyer's work, the integration of skills, attitudes and approaches, is not something which can be learned in an intellectual sense. It is a "knowing-in-action."[52] What is called for, then, when we want to integrate the parts into a whole, is not the teaching of rules or techniques, but rather the development of images of lawyering.[53] These images can be measured by how well-defined, rich and three-dimensional they are. The educational task is, in part, to help students generate such images.

To help students develop their understanding of the lawyer's work, the learning environment must be one in which the background is allowed to vary. Or, to put it another way, the subject for learning must be the broad context of lawyering, not a narrow construct highlighted against a static background. The learning experience must be a dense one. That is, it must have enough detail so that both the subject and the background can be experienced. It must have enough detail so that the learner can experience the complications, ambiguities, tensions, and interrelationships which influence the lawyer's work.[54]

The learning experience must have texture and breadth sufficient to allow a number of "fixes" on the role. A learner

51. It is inevitable that much of the integrative task for lawyers takes place outside of the law school setting. Integration is a process which remains ongoing throughout a person's career. However, law schools can and should play a role in the beginning phases of the integration, where its direction is, at least initially, set.

52. *See* Flood, *supra* note 7, at 5.

53. It is not that intellectual analysis has no place in learning about lawyer's roles and in the integration process inherent in lawyering. On the contrary, a critical, and hence intellectually rigorous, view of these processes is imperative. However, the process cannot proceed in the absence of the felt and experienced images of lawyering. *See infra* notes 77–79 and accompanying text.

54. *See* Luban, *supra* note 15, at 642 (arguing that it is precisely the richness of the data in real experience which allows judgment to develop).

cannot see every possible way in which the lawyer's work is evidenced. This is not the way we learn its structure. Rather, the learner must see and experience enough of the work to "understand" it. This requires a number of views from angles sufficiently different, yet sufficiently connected, to get a fix on the meaning or content of the work and its integration.

As indicated above, a model for this type of learning is the traditional client-representation clinic in which the student takes on the actual work of a lawyer. The experience provides, in almost all respects, a learning environment which is as complex, ambiguous, varied and rich as "real" law practice.[55] Students experience the tensions and conflicting pulls of the lawyer's work first hand and, from that experience, learn. They also learn from their interaction with, and observation of, their supervisors. What they learn is an approach to integrating the lawyer's work, as demonstrated by the supervisor's example and instruction, and some insight into their own comfort with the approach.

The client-representation clinic model places primary emphasis on learning by doing. The student can, as well, be exposed to the lawyer's work by observing it in, for example, an outplacement internship. This model, however, provides less of an opportunity for the student to practice the modes of integration he observes. It provides less of the "motivational tensions"[56] which arises from being fully responsible for a client. The result could be a diminished understanding of the lawyer's work. On the other hand, the increased opportunity to observe another lawyer in action may bring additional richness to the experience. Further, since observation of a lawyer at work is not subjected to the same constraints as are most client-representation clinics, students may be able to choose from a wider range of experiences from which to build their integrating images.

55. Of course, the most obvious difference between real law practice and clinic practice is the financial dimension. Students do not have to worry about providing competent services within the bounds of the limited financial abilities of their clients. However, a similar constraint, a shortage of time, operates in the clinic. The student must take time from his other activities to work for the client generating, to some extent, the same pressures as a lack of client resources might generate in a real law practice. The clinic is limited, in general, to work with low income persons and their legal problems. Thus, it does not provide an opportunity to explore attorney integration in aspects which are unique to other types of law practice.

56. Luban, *supra* note 15, at 644.

There may be room in a lawyer integration curriculum for both client-representation clinics and outplacement internships. Each should be evaluated by the richness of the experience and the extent of the opportunity the student has to interact with or observe the supervisor/lawyer.

In short, doctrinal/skills learning and integrating image development are two separate tasks requiring different approaches and different learning environments. Curricular planning and evaluation must proceed with full focus on those differences.[57]

C. *The Institutional Stance with Respect to the Subject Matter of Lawyer Education*

Each of the two stages or levels of lawyer education described above can be approached in the following ways: descriptive, normative/prescriptive and critical.

Under the descriptive approach, the law school simply passes on to its students the way things are done or thought about by the profession. There is no evaluation or critical study. The descriptive approach simply teaches how things are done.

Under the normative/prescriptive approach, the law school focuses on how to do things well. Here, the law school views its role as passing on the "best" of the profession. The fundamental contours of the profession and the law, however, are taken for granted in judging what is "best."

Finally, under the critical approach, the law school steps outside of the profession and the legal system to analyze and evaluate them against broader philosophical, moral and political values. This approach poses questions such as these: "Is this a moral, just system?"; "What lawyer practices amount to manipulation of clients?"; and "To what extent should lawyers insist on remaining true to their own values and political goals?"[58]

The institution's particular approach toward the subject

57. The two processes are not always and necessarily entirely separate. Some integration learning occurs in the doctrinal classroom as the teacher exhibits certain attitudes and approaches to a set of lawyering tasks. Similarly, some skill and doctrinal learning occurs in a field clinical setting. However, the true value of real or realistic experiences is in their ability to develop integrating images, not in their ability to teach skills and doctrine.

58. *See* Condlin, *supra* note 13, at 49.

matter manifests itself in its choice of faculty. A law school with a descriptive approach is satisfied with teachers who are representative of the practicing bar. Selection of specific teachers is of secondary importance since it is the practical knowledge of lawyers—knowledge most of those in practice are presumed to know—which is of importance. Clinical programs which rely heavily on "experience," where the teacher takes a "hands-off" approach to the students allowing them to "learn for themselves," fall into this category of descriptive education.

An institution with a normative/prescriptive approach must exercise more institutional control over the selection of its teachers. To pursue this approach effectively, the institution must retain teachers who are best able to teach the latest theories of negotiations, the most recent antitrust cases, the most rigorous case analysis. These teachers are not expected to step outside of the profession to evaluate, for example, the standards by which "best" or "most effective" are judged.

A law school with a critical approach must make a commitment to teachers who can and will step outside of the profession to evaluate it in terms of broader social, political, psychological, ethical and personal concerns. These teachers must have the capability and the resources to study and to think deeply about their subject matter. Traditional notions of academic scholarship provide an example of this kind of approach to teaching law.

II. Evaluating and Planning for a Curriculum

A. Criteria for Evaluation and Planning

The principles developed in the previous section of this paper may be used to state a set of criteria for the evaluation and planning of a law school curriculum.

1. Criteria Related to Institutional Role Definition

a. The curriculum should address those portions of the

> To make judgments about what would be better [ways of thinking about and performing in lawyer role], principles of individual action and social organization must be linked to a theory of society or theory of justice, a theory of the way in which lawyers and legal institutions ought to operate in order that fair and just states of affairs be produced.

Id.

lawyer education process which are not adequately addressed outside of law school.

b. The curriculum should avoid educational activities and goals which can be adequately duplicated outside of law school.

Much of the process of learning to be a lawyer takes place on the job or in some other way[59] after graduation from law school. There is no justification for using scarce educational resources to duplicate that learning.[60] Rather, law schools should focus on providing those elements in the development of the "good lawyer"[61] which do not occur naturally in sufficient quantity or quality outside of law school.

2. *Criteria Related to Educational Content*

a. The curriculum should provide ample opportunities for all students to develop the fundamental skills and to acquire the fundamental doctrinal knowledge required for competent lawyering.

b. The curriculum should provide the opportunity for all students to develop integrating images of lawyering.

The inclusion of the first of these criteria requires little justification. It represents the *status quo*; most law school education is aimed at the development of skills and doctrinal knowledge. Because the second criterion departs from this standard justification for law school education, it requires further discussion.

The process of integrating the lawyer's work is critical to the process of becoming a lawyer. The question presented here is whether that integration, or some portion of it, belongs in the law school curriculum. Are there some parts of the integration task which do not occur, or which do not occur adequately, outside of the law school setting?

Lawyers undergo an integrative process as they practice law. All lawyers develop some means of linking their skills and

59. *Id.* For example, attorneys are required to attend continuing legal education seminars.

60. Another way of saying this is that law school learning must be "leveraged." That is, an hour of law school activity must be worth more than an hour of available "experience" in the world of lawyering. If the law school activity is not leveraged in this way, then there is no justification for asking law students to pay money for it when they could be getting paid for experiencing the real world as a law clerk or an associate.

61. The term "good" refers both to effectiveness and to ethics.

knowledge to form a whole; all develop some operative reconciliation of the conflicting imperatives of the work of the lawyer. However, if it is important what an integrated lawyer looks like and does, and if we are to affect that final form, integration must be addressed in law school.

In some respects, the integrative process is an extension of learning the underlying skills and doctrinal knowledge. Thus, it is important that a student know the law governing contracts, how to interview and counsel a client, and how to draft a contract. It is equally important that she know how to put all of these things together to accomplish a task for a real client with a real problem. If this instrumental integration can be encouraged, it follows that it is a proper subject for law school education.[62]

When one considers contextual integration, the importance of the integrative curriculum increases considerably. Important as they are, the quality of the basic skills which students learn will not be the main measure of their contribution to the world around them. Rather, a lawyer's impact on the world around her is measured by her explicit or implicit notions of ethics, politics and self, on her "professionalism," and on the place and role of the profession in society.[63]

Students and young lawyers will, to be sure, develop images and paradigms of lawyering which will guide them in their careers. Left without critical attention in the law school curriculum, those beginning images will be of uncertain genesis and largely unexamined, grainy and incomplete. Failure to explicitly address in the curriculum the larger issues of integration is to abdicate this critical stage of lawyer development to the uncertainties of the competitive marketplace.

However, a law school cannot, and should not, attempt to take its students through the entire integrative process of becoming a lawyer. The lawyer's work, in its fully developed form, is so varied and complex as to be beyond the scope of any institutionalized educational program. Rather, to the extent that the understanding of the lawyer integration task pro-

62. At some point, of course, the institutional attention to the integration of skills must stop and the integration must be allowed to take its own course as the lawyer begins and continues to practice. The law school's function here is to provide images or maps for this future integration.

63. Of course, all of these notions have within them ideas of competence. One cannot be ethical unless one has the competence to act ethically.

ceeds from integrating images of lawyering, the school can and should provide its students with the opportunity to acquire one or more such images of the lawyer's work in sufficient detail to provide a useful guide in the integrative task.

The environments in which the law student and the new lawyer learn the lawyer's work constitute powerful influences on the shape of the integrating images that individuals develop.[64] To ignore this integration process in law school is to abandon that process to random environmental conditions.

Equally important is the "meta-message"[65] conveyed by the failure to address explicitly issues of contextual integration. Educational institutions have neglected to address the fundamental questions of lawyer work. Either the questions are not perceived to be of sufficient importance to address, or the questions are not seen as legitimate and permissible areas of inquiry for "tough-minded"[66] lawyers. It follows that the new lawyer will feel that hard thinking about the values underlying her work is either not important or not legitimate. Even if a lawyer *wants* to think about her work in broad, contextual terms, she may lack the tools or the raw material to do the thinking. The lawyer's analytical skills may be too weak to allow her to think critically about the central integrative tasks. The lawyer's environment may be empty of images which should be emulated. She may not know what the range of integrative approaches are, or may not know what is possible.

The law school must address the issues of the integrative

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64. *See* Meltsner, *supra* note 30, at 624. These environments "present and transmit powerful norms of professional conduct . . . . Because few [lawyers] were trained in settings where the attitudes and skills necessary to work on [complex] issues were nurtured, acquiring the necessary training is something of a personal journey." *Id.* at 634. *See also* Condlin, *supra* note 13, at 53–59. The conventional clinic environment inadequately shapes these impressions for a variety of reasons, including the fact that effective critique is inhibited.

65. A "meta-message" is the message a professor or institution conveys through their choices regarding which material will be included (and excluded) in the course curriculum and how that material will be communicated. Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 619 (1983).

66. *See* Cramton, *supra* note 6, at 250.

> [A] good lawyer will have a "tough-minded" and analytical attitude toward lawyer tasks and professional roles. The law teacher must stress cognitive rationality along with "hard" facts and "cold" logic and "concrete" realities. Emotion, imagination, sentiments of affection and trust, a sense of wonder or awe at the inexplicable—these soft and mushy domains of the "tender minded" are off limits for law students and lawyers.

Id.

task seriously. Every student must be provided with one or more integrating images of the lawyer's work and every student must be required to develop the ability to think critically about her work and profession.

3. Criteria Related to Educational Method

a. The acquisition of skills and the teaching of doctrinal knowledge occurs most effectively in the *ceteris paribus* classroom.[67]

b. The primary educational role of the out-of-classroom real or realistic lawyering experience is to assist students in the development of integrating images.

c. A curriculum aimed at the development of integrating images requires out-of-classroom real or realistic lawyering experiences.

Skills and knowledge should be taught primarily in the classroom. The primary purpose of field experiences is to assist in the tasks of integration. This does not mean that skills and knowledge cannot or are not learned in the out-of-classroom experience (they are and can be) or that the classroom has no integrative aspects to it (it clearly has some).[68] It does mean that the classroom in its various manifestations is the most efficient place to teach skills and doctrinal knowledge. The very reasons that make the classroom strong in this area make it a weak place to work on the tasks of integration. Similarly, the out-of-classroom environment is a weak place to develop skills or doctrinal knowledge. In evaluating and planning a curriculum, special caution is necessary when structures which link methodology and subject matter are used in some other

67. Recall that this is not limited to the Socratic classroom (which utilizes the traditional question/answer law school teaching method) but includes, as well, the use of the problem method, lecture, writing exercises, role playing exercises, and simple simulations. The similarity is that all of these methods attempt to focus on a particular skill or set of doctrinal rules by limiting variation in the "background." The particular set of doctrinal rules involved need not fit into conventional doctrinal categories. *See supra* notes 5–11 and accompanying text.

68. Classroom teachers convey information about the work of the lawyer through their own behavior, through their explicit comments about lawyers and their work, and through the hidden, implicit messages which arise from the context of the classroom. *See supra* note 65. Further, it is clear that some forms of instrumental integration are or could be done in the classroom. For example, a negotiation exercise could be used in an environmental law class.

fashion.[69]

4. *Criterion Related to Educational Orientation*

Legal education should be prescriptive and critical, not merely descriptive.

This criterion for measuring curriculum flows from an assumption about the nature of an institution of higher education. The assumption is that the critical stance is *the* essential aspect of higher education. Although the critical stance is not the only feature of such education, it is that part of the mission of an institution of higher education which, if sacrificed, would change the very nature of the institution. Condlin summarizes the centrality of the critical stance: "Stripped of its critical role, the university is a mere socializing agent, an instrument of prevailing orthodoxy, engaged only in legitimation and control."[70]

The importance of the critical stance in legal education flows as well from the nature of the legal profession. It is a line of work with the powerful capacity to do immediate harm or good; one in which there are conflicting obligations. Because of the power they wield, lawyers must understand and think critically about their work as it relates to the world around them. Because of the complexity of the work and its relation to its context, the germs for such critical understanding must be formed in the law school setting.[71]

The proposition that a legal curriculum should include a prescriptive stance requires little discussion. The task of a legal educator is to teach students to be the best lawyers they

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69. One should question the appropriateness of a classroom experience whose primary educational goal is integrative, or of a field experience whose primary articulated purpose is to develop skills or doctrinal knowledge.

70. Condlin, *supra* note 13, at 50. The quote refers to Condlin's notion of "political critique," a notion which is close to this author's idea of the critical stance. *See also* Bok, *supra* note 31, at 583.

> [A] glaring deficiency [in law school education] is the lack of attention given to the . . . problems of the legal system. . . . This neglect is particularly striking when one hears the repeated claims of established law schools that they are not training lawyers but preparing "leaders of the bar." If this assertion is to be taken seriously, one would suppose that students in these schools would be studying ways of creating simpler rules, less costly legal proceedings, and greater legal protection for the poor and middle class. Yet even a cursory glance at the law school catalogue will serve to destroy this illusion.

Id.

71. *See* Condlin, *supra* note 13, at 50–51.

can be—not merely to be lawyers who reflect the ambient level of knowledge and skill in the community.

There is little room in the curriculum for an approach to the study of law or lawyering which is merely descriptive. Descriptive instruction teaches or shows, without evaluation or critical study, how lawyers or judges in the community actually do things or think about things. Students will have plenty of opportunities to learn how things are in practice after they graduate. Instruction which is merely descriptive is justifiable only where the experience or instruction the student receives is otherwise unavailable to new lawyers.

Experiences which are merely reflective of the way things are ought not to be viewed as education, but rather as the subject matter of education. As Condlin puts it, the way things are forms part of the "text" for the study of law and lawyering.[72]

B. Recommendations for the Curriculum

The integrative portion of a law school curriculum must involve an experience of real, or realistic, lawyering rich enough to produce integrating images of the lawyer's work. It must also be prescriptive and critical, not merely descriptive.

These two criteria can be accomplished in one or both of two ways. First, legal educators can carefully select the images of lawyering which the students receive in the curriculum, thus ensuring that those images reflect the prescriptive, critical thought of the institution. This option teaches good lawyering, and, in this article, it is referred to as the "direct" method.

Second, legal educators can exercise less control over the images themselves, but require the students to examine and study those images in a prescriptive and critical way.[73] This option teaches how to think *about* lawyering, and is referred to in this paper as the "indirect" method. Both approaches entail a serious commitment to facilitating the integrative task, a commitment which requires the use of professional educators.

The conventional, in-house law clinic is the paradigm of the

72. *See id.* at 67. This should not strike anyone as a radical view. The "text" for much of the law school curriculum is comprised of judge behavior, as expressed in appellate decisions. These are studied in part to learn how things are done in the community, but also in an effort to study how things ought to be done and to study the effects that judge behavior has on the world outside of the law.

73. *See id.* at 73.

direct approach.[74] In it, the images of lawyering are generated by the student's own experience in the role of lawyer, as directed and reflected back to him by the teacher. The teacher shapes the images by setting standards and expectations, evaluating and reflecting on the student's experience and performance, and, in the role of lawyer, by exhibiting images of lawyering herself.

To satisfy the criteria set out above, the conventional clinic must provide a prescriptive and critical analysis of the work of the lawyer. In this setting, the analysis need not be explicit; it may be implicit in the directions and images the teacher provides to the student. But, if the lesson is to be prescriptive and critical, analysis is essential.

The indirect method of facilitating contextual integration is used in the outplacement/seminar model in which the roles of practitioner and educator are separated. In this model, students have lawyering experiences, usually outside of the law school, and bring those experiences into the seminar classroom as part of the subject of study.[75] In this model, the prescriptive/critical analysis is for the most part explicit. The experiences of the students are discussed and analyzed in the classroom.

This need for critical analysis suggests that the contextual integration subject matter must be taught by professional, academic teachers. This form of teaching is as seriously academic as any other. It, therefore, ought to be taught by teachers who are as professional as any others.[76]

As Condlin points out, analysis must proceed from theory.[77]

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74. In the conventional in-house clinic, the roles of teacher and lawyer/supervisor are combined into one person. *See id.* at 53–59 (discussing the problems associated with this combination of roles).

75. Condlin suggests that tutorials tend to better preserve client confidences than larger seminars. Meetings are also simpler to arrange. *Id.* at 63–64.

76. At the time that this article was being written and circulated to the William Mitchell faculty, the status of clinical teachers at William Mitchell College was the subject of debate. At issue was whether clinical teachers should be full-time, tenure track instructors or whether they should have some other status, e.g., adjunct or part-time, non-tenure track.

77. Condlin expresses the conclusion in this way:

> This analysis presupposes a critical theory, which in turn presupposes worked-out views on the nature of a fair and just legal system and the role of lawyer practices in operating and improving it. This theory can be a psychology of law practice, in which individual lawyer behavior is viewed as relatively discrete and self-contained action and the principles that explain its operation are identified and categorized, or a kind of legal sociology (or

This requires the educator to have thought deeply and critically about the subject matter. Deep and critical thought is, at a minimum, that thought which has been informed by and is developed in the context of what others have thought and written on the subject. The teacher, in short, must be familiar with the literature relevant to the subject matter.[78] Those who teach about the lawyer's work, that is, those who teach in that part of the curriculum addressing the integrative task, need to have the opportunity, and the inclination, to think and read deeply about their subject matter, just as do those who teach torts and contracts.

Relatedly, these teachers must have some expectation of continuity in their work. The development of critical thought about lawyering does not occur overnight. Just as the institution invests in its other faculty, it needs to invest in the faculty who teach the integrative curriculum. Time spent in scholarship and study in early years of teaching will pay off in later years.

The teacher in the in-house clinic must have ample individual contact with the students. The learning the student does takes its prescriptive and critical character from contact with the teacher. Without ample contact, the learning experience becomes a random, merely descriptive one.

The working arrangements for the teacher in the conventional clinics must have the characteristics of the arrangements that are standard for other full-time faculty. Working conditions must encourage the teachers to stay at the institution. These teachers need to have the time to read and think about their subject matter as they continue to meet the necessary, but time-consuming, demands of face-to-face contact with students.[79]

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economics), in which principles of individual action are replaced by equivalent principles about legal institutions and systems, and lawyer behavior is explained by the incentives and constraints of the social matrix in which it occurs.

Condlin, *supra* note 13, at 48–49.

78. There is a large body of literature which addresses the work of the lawyer from a theoretical perspective. A partial bibliography is attached to this article as an appendix.

79. It is for this reason that a structure in which in-house clinic teachers are adjunct faculty will not meet the criteria set out for the critical/prescriptive approach. Even if adjunct teachers could take the time to develop a theory-based understanding of the integrative task, they do not have the time to shape the students' lawyering experiences to reflect the theory. This conclusion is supported by analysis of time

The object of the outplacement/seminar is to teach the students to think prescriptively and critically about the lawyer's work. This type of analysis must proceed from theory. Thus, such a seminar must provide and develop a theoretical framework within which the students can analyze and assess the integrating images of lawyering they have received through their field placements.

The implications of this are two-fold. First, there must a set of course materials for such a seminar. Without materials which articulate a theoretical framework for the analysis, the analysis will be *ad hoc* and anecdotal. Merely asking students to talk about what they think about their experiences, without providing a framework for rigorous thought does not satisfy the requirements for a prescriptive/critical approach. Second, the person who teaches the seminar must be conversant not merely with the lore of lawyering, but with the theory of it as well.

The issues involved in the integrative task are difficult ones. There is no preexisting set of textbooks which have organized the issues into a syllabus with reading materials.[80] Teaching such a seminar involves developing and organizing materials, a task which would be difficult for adjunct faculty. At least initially, the seminars need to be developed and taught by full-time faculty members.

The strengths and weaknesses of the two approaches are mirror images of each other. In the conventional clinic, the focus of the critical teaching is on the student's experience. By acting as lawyers, students can explore their own values in a setting which facilitates self-knowledge and self-critique. In the outplacement/seminar, on the other hand, the separation of the teacher from the student's experience may direct focus more on theory and away from the concrete experience of lawyering. To choose integrating images which are congruent

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records of William Mitchell students in various clinical programs. On average, students in clinics supervised by half-time teachers received four times more face-to-face supervision than those in clinics supervised by adjunct faculty.

80. However, some consideration should be given to using the following two texts, perhaps supplemented with additional material: E. DVORKIN, J. HIMMELSTEIN & H. LESNICK, BECOMING A LAWYER, A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM (1981); G. HAZARD & D. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION (1985). *See also* J. SAMMONS, LAWYER PROFESSIONALISM (1988) (raising some of the same issues but not in great breadth).

with their own values, students must come to know those values. The conventional clinic promises more direct attention to those values than does the outplacement/seminar.[81]

If the teacher's closeness to the student's experience encourages more awareness of personal values by the student, it also deprives the teacher of "distance" from the subject matter. In the conventional clinic, the roles of lawyer and educator are fused into one. Some find this a fatal flaw. Some, Condlin in particular, would argue that the teacher cannot be truly critical in his own approach if the subject matter about which he is teaching is his own lawyering.[82] The outplacement/seminar approach does not suffer from this shortcoming.

Condlin fails to see the advantages of the conventional clinic. Condlin would separate the subject matter—here, lawyer integration—from the teaching method. He insists that the teacher be separate from the subject matter so that the teacher can be truly critical of the subject matter. This, he says, is the essence of the university.

But, he has too narrow a view of what it is that teachers teach and how they teach it. A teacher of history, for example, teaches at several levels. At one level there is the explicit subject matter. At another level, there is the teacher's stance toward the subject matter, the way the teacher "does" the subject matter. Thus, a history teacher teaches about history. She also demonstrates a way of *doing* history. Similarly, a contracts teacher teaches the law of contracts. He also demonstrates a way of doing lawyering.

Of necessity, each teacher lacks critical distance from her own stance toward the subject matter. Yet no one would suggest that there must be a secondary teacher to teach about, or critique, the first teacher's stance. Any move in that direction would produce, at best, a false objectivity: Thinking we had obtained objectivity about the first teacher's stance, we would be lulled into ignoring the second teacher's lack of distance on his own stance.

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81. My experience teaching in the Work of the Lawyer outplacement/seminar provides some confirmation of these statements. Though an explicit focus of the course is on the values of the students, some students find this focus to be in competition with a focus on theory. Further, the students' explorations of their own values are conducted, for the most part, hypothetically since they are not actually acting as lawyers in their outplacements.

82. *See* Condlin, *supra* note 13.

The teacher of the conventional clinic, like all teachers, lacking some objectivity on her own approach to lawyering, nonetheless brings to bear a critical perspective on the lawyer integration task. For the most part, the teacher teaches by showing, by the creation of images of lawyering.[83] The critical perspective ought to be built into those images.

It is true that the clinic teacher lacks distance from the lawyering images she creates. It is also true that the contracts teacher lacks distance from the images of "legal reasoning" or "case analysis" he creates. The educational objective is for students to be critical of their own choices about lawyering; that is, to be critical even when, or especially when, they lack distance from the subject matter of the critique. Lack of distance between teacher and subject matter is not only unavoidable, it provides an image of a critical approach to lawyering.

Legal educators must, of course, look at the cost to the institution of each of these methods of facilitating integration. The conventional clinic has a high direct cost. A half-time teacher can supervise only about six students per semester. This low student/teacher ratio is essential to the development of prescriptive and critical images of lawyering.

The cost of the outplacement/seminar approach is somewhat lower. However, the difference in cost may not be dramatic if the seminar is approached with the same level of seriousness as other important classes in the curriculum.[84]

There are other differences as well. The areas and types of legal practice in which the conventional clinic is involved are somewhat limited.[85] Further, some students may, after law school, enter a situation which is rich in thoughtful and excellent lawyering. They may not need exposure to critical lawyering images. For them, it may be sufficient to have thought critically about lawyering while in law school.

Legal educators should furnish ample opportunity for students to experience critical, prescriptive integrating images directly in a conventional clinic setting. Alternate means of

83. That showing may be in the form of a demonstration by the teacher, or in the form of a comment on and evaluation of the student's performance, "pointing out" the correct and incorrect instances of the integrating image.

84. At William Mitchell, a two-credit seminar of 15 students represents about 33% of a full-time teacher's teaching load for a semester.

85. In general, it must involve the kinds of legal problems faced by low income persons. Also, for educational reasons, the types of cases must be relatively simple.

approaching the integrative task can be provided by establishing a set of outplacement/seminar courses aimed at the critical study of the integrative process in a number of areas of law practice which are of relevance to students. The law school student body is a diverse group. The integration curriculum should accommodate that diversity by providing a variety of learning approaches.[86]

CONCLUSION

There are two central educational imperatives which are in tension with each other in legal education. Students need to learn by pieces, by rules, by analysis. Lawyers need the pieces to be put back together again.

Lawyers who emerge from our law schools are more than the sum of the knowledge and skills they have learned. Each will combine that knowledge and those skills with their own values, with their own notions of what lawyers do or should do, with their own ideas about how lawyers fit into society.

Putting all the pieces together, reconciling the conflicting pulls of diverse values—that is the hard part about becoming a lawyer. This difficult task of integration requires the critical stance of the academy. Law schools have an obligation to complete the education of their students, to identify and address this need for integration within the law school curriculum.

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86. *See* Chickering, *Developmental Change as a Major Outcome*, in EXPERIENTIAL LEARNING 93 (1976) (arguing that adult students may be at varying stages of development, and thus have divergent attitudes toward accepting teacher-espoused values).

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